

TOWN OF GILBERT
DESIGN-BUILD SERVICES CONTRACT

For

Project Name: Pool Pump Pit Modifications

CIP No.: PR105

Contract No.: 2015-7012-0514

Date:

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AGREEMENT FOR DESIGN-BUILD SERVICES

This Design-Build Contract (the "Contract") is entered into this day of 20 by and between the **Town of Gilbert ("GILBERT")** and (the "**Design-Builder**").

RECITALS

GILBERT issued a Request for Qualifications dated 11/5/14 pursuant to which GILBERT solicited statements of qualifications from Design-Build firms to design and construct the Pool Pump Pit modifications Project to be located in Gilbert, Arizona (the "Project").

GILBERT has selected the Design-Builder to provide the programming, design; engineering and construction services set forth in this Contract and the Contract Documents.

The Design-Builder is ready, willing and able to provide the services required in accordance with the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1.0 GENERAL PROVISIONS

1.1 EXECUTION, CORRELATION AND INTENT

Execution of Contract. Execution of this Contract by the Design-Builder is a representation that the Design-Builder has visited the site and become familiar with the local conditions under which the Work is to be performed.

1.2 PHASED CONTRACT

This Contract consists of two discreet phases: (i) the pre-construction phase and (ii) the construction phase. The Design-Builder shall be compensated on a lump sum basis for the pre-construction phase of this Contract. At or before the conclusion of the pre-construction phase GILBERT shall negotiate a Guaranteed Maximum Price ("GMP") for the construction phase. If GILBERT and the Design-Builder cannot, after good faith efforts, agree on a GMP for the construction phase, GILBERT shall be free to publicly bid the construction phase utilizing the Construction Documents as defined below.

1.3 DEFINITIONS

1.3.1 "Addenda" means written or graphic instruments issued prior to the opening of statements of Qualifications, Proposals or Bids which make additions, deletions or revisions to those or Contract Documents.

1.3.2 "Allowance Items" means those items included in the GMP as allowances, as more fully described on Exhibit E attached hereto and incorporated herein by reference.

- 1.3.3 "Applicable Laws" means all laws, codes, ordinances, rules and regulations of governmental authorities having jurisdiction over the Site and/or the Work.
- 1.3.4 "Change Directive" means a written order signed by GILBERT directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the GMP and/or Schedule. GILBERT may order changes in the Work within the general scope of the Contract, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- 1.3.5 "Change Order" means a written order signed by the Design-Builder and GILBERT authorizing a change in the Work, which also may adjust the GMP and/or the Schedule, and which shall constitute a Modification. The GMP and/or Schedule may be changed only by Change Order.
- 1.3.6 "Change Proposal" means a proposal for a Change Order submitted by the Design-Builder to GILBERT, either at the request of GILBERT, or at the Design-Builder's own initiative.
- 1.3.7 "Construction Documents" means the plans and specifications prepared by the Design-Builder for construction of the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by GILBERT prior to incorporation into this Contract.
- 1.3.8 "Construction Notice to Proceed" means the notice given by GILBERT to the Design-Builder stating that the Site is available to the Design-Builder and directing the Design-Builder to commence construction of the Project.
- 1.3.9 "Construction Phase" means the period set forth in the Schedule beginning with the issuance of the Construction Notice to Proceed and ending on the date of Final Completion of the Project.
- 1.3.10 "Construction Work" means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of the Project as set forth in the Contract Documents.
- 1.3.11 "Contract" means this Design-Build Contract and all Change Orders and/or modifications hereto executed by the Parties.
- 1.3.12 "Contract Documents" means those documents set forth on Exhibit F, all of which, together with this Contract, form the entire integrated agreement between GILBERT and the Design-Builder. Exhibit F shall be updated by the Parties as additional Project-related documents are prepared.
- 1.3.13 "Contract Time" means the period of time, including authorized adjustments, allotted in the Schedule for the Substantial Completion of the Work.
- 1.3.14 "Cost of the Work" consists of those items of Work, which are paid for by GILBERT to the Design-Builder, and consist of those categories of costs set forth as allowable on Exhibit L.

- 1.3.15 "CPI" means the United States Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average published by the U.S. Department of Labor, Bureau of Labor Statistics.
- 1.3.16 "CPM" means a critical path method schedule in the form of precedents, networks and time sequences.
- 1.3.17 "Day" or "Days" means calendar days.
- 1.3.18 "Delay Costs" means those items of Cost of the Work attributable to an Excusable Delay for which GILBERT is responsible and which are payable by GILBERT to the Design-Builder pursuant to a Change Order as provided in Article 6.
- 1.3.19 "Design Materials" means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design-Builder (a) to GILBERT under the Contract Documents or (b) developed or prepared by the Design-Builder specifically to discharge its duties under the Contract Documents.
- 1.3.20 "Design Phase" means the period set forth in the Schedule commencing with the Design-Builder's receipt of a Notice to Begin Design and ending upon the date GILBERT approves the Construction Documents.
- 1.3.21 "Design Work" means that portion of the Work consisting of the programming and design services required to be provided in connection with the design of the Project as set forth in the Contract Documents, and subcontracted by the Design-Builder to the Architect or Engineer, which shall be performed consistent with the standards of professional care exercised by national design firms.
- 1.3.22 "Fee" means the profit payable to the Design-Builder, which is a part of the GMP, as more fully described on Exhibit D attached hereto.
- 1.3.23 "Final Completion" means the point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents, including Punch list items and delivery of all "Close-Out documents" required by the Contract Documents and this Contract.
- 1.3.24 "Force Majeure" means labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Design-Builder has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than the Design-Builder and Subcontractors), or any other similar act or condition, in each case only to the extent the event in question is beyond the control of and without the fault or negligence of the Design-Builder. A labor shortage or material shortage is not force majeure.
- 1.3.25 "Indemnified Parties" means GILBERT, its agents, officers, and employees.
- 1.3.26 "Indirect Costs" means that portion of the GMP contract amount identified for General Conditions, Bonds, Sales Taxes, Insurance, and the Fee.

- 1.3.27 "General Conditions" are those costs generated away from the site and that are not directly related to accomplishing the work on site associated with Specification Divisions 1-16.
- 1.3.28 "Guaranteed Maximum Price" (GMP) means the contract amount that the Design-Builder shall not exceed, as adjusted by approved change order in accordance with Article 6. The Design-Builder does not guarantee that any Allowance Item will not change, but agrees that it alone will be responsible for paying all costs of completing the Work that exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as the basis for the GMP are identified in Exhibit F.
- 1.3.29 "Liquidated Damages" means the damages payable by the Design-Builder to GILBERT in the event the Design-Builder does not achieve Substantial Completion or Final Completion of the Project as specified in the Contract Documents.
- 1.3.30 "Modification" means a Change Order to this Contract executed by the parties after the date hereof.
- 1.3.31 "Notice to Begin Design" means the notice given by GILBERT to the Design-Builder stating that the Design-Builder is authorized to begin the design of the Project.
- 1.3.32 "Party" or "Parties" means GILBERT and/or the Design-Builder, their respective permitted successors and/or assigns, and any other future signatories to this Contract.
- 1.3.33 "Preconstruction Services" means those services performed by the Design-Builder prior to work beginning on the Site. These services are negotiated separately and are not a part of the GMP.
- 1.3.34 "Project" means the facilities to be known as Mesquite Aquatic Center, Greenfield Pool, Williams Field Pool and Perry Pool, together with all on-site and off-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as are required thereby or reasonably inferred there from.
- 1.3.35 "Project Manager (PM/CM)" means persons or firm retained by GILBERT as outlined in Exhibit J to provide project management/construction management services during design and construction of the Project.
- 1.3.36 "Punch List" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a Certificate of Substantial Completion/Certificate of Occupancy.
- 1.3.37 "Schedule" means the schedule attached hereto as Exhibit C pursuant to which the Design-Builder has agreed to complete the Work. If schedule modifications are required, the Schedule shall be adjusted pursuant to the provisions of the Contract Documents.
- 1.3.38 "Scope Change Costs" means those items of Cost of the Work attributable to changes in scope

of the Work and payable by GILBERT to the Design-Builder pursuant to a Change Order, as provided in Article 6.

- 1.3.39 "Site" is the real property on which the Projects will be located, which is more fully described on Exhibit G hereto.
- 1.3.40 "Subcontract" means an agreement between the Contractor, the Architect, Engineer or the Design-Builder and another person or entity engaged to perform a portion of the Work.
- 1.3.41 "Subcontractor" means an individual or entity who has entered into an arrangement with either the Architect or Engineer, the Contractor or the Design-Builder for the provision of labor, materials or other services required to be performed by the Design-Builder under the Contract Documents.
- 1.3.42 "Substantial Completion" means the stage in progress of the Work when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that GILBERT may use or occupy the Project, or a designated portion thereof, for the purpose for which it was intended and a Certificate of Substantial Completion/Certificate of Occupancy has been issued.
- 1.3.43 "Total Project Cost" is the sum of the GMP Proposal and the Preconstruction Services.
- 1.3.44 "Work" means all labor materials and services required to be performed or provided by the Design-Builder, including Construction Work and Design Work, to complete the entire Project or the various separately identifiable parts thereof pursuant to the provisions of the Contract Documents, as fully outlines in Exhibit A.
- 1.3.45 "Working Days" means Days exclusive of Saturday, Sunday and GILBERT recognized legal holidays. Working Days shall be set forth in the Schedule.

2.0 SCOPE OF WORK

2.1 PERFORMANCE OF WORK

- 2.1.1 The Design-Builder accepts the relationship of trust and confidence established between it and GILBERT by this Contract. The Design-Builder agrees to furnish the design, architectural and/or engineering services and construction services set forth herein and agrees to furnish efficient business administration and superintendence, and to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of GILBERT.
- 2.1.2 The Design-Builder covenants and agrees that it shall be responsible for performing and completing the Work in accordance with this Contract, including all Exhibits, the Contract Documents and Applicable Laws. The Design-Builder covenants that the Design Work and the Design Materials provided there under shall be appropriate for the purposes of the Project. Although it is the responsibility of the Design-Builder to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Law after the date of establishment of the GMP or the Schedule, and such change has the effect of increasing the cost

or time of performance of the Work, such change may be the subject of a Change Order under the provisions of Article 6 hereof. Additionally, the Design-Builder shall be responsible for achieving Substantial Completion of the Project by the date of Substantial Completion and Final Completion set forth in the Schedule, as the same may be extended from time to time pursuant to the provisions of this Contract.

- 2.1.3 The Design-Builder shall comply with Applicable Laws, and shall give applicable notices pertaining thereto. The Design-Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper execution of the Work and completion of the Project. Notwithstanding the foregoing, GILBERT has informed the Design-Builder that fees in connection with building permits, right-of-way permits, and similar Town of Gilbert permits relating to construction will be waived by the applicable entities, and are not to be included in the GMP. If and to the extent such entities impose charges after establishment of the GMP, such charges shall be paid by GILBERT, or shall be the subject of a Change Order to this Contract in accordance with the Change Order provisions of this Contract.
- 2.1.4 The Design-Builder shall secure and pay (as Cost of the Work) for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work, excluding those set forth in Paragraph 2.1.3 which are waived. To the extent there is a change in the type or cost of any of such permits, fees, licenses or inspection occurring after establishment of the GMP, there shall be an equitable adjustment in the GMP and Schedule on account of such change in accordance with the Change Order provisions of this Contract. The Design-Builder shall comply with and give notices required by Applicable Laws.

2.2 PROFESSIONAL STANDARD; OWNERSHIP OF DOCUMENTS

- 2.2.1 Standards of Performance. Design-Builder's Team and Key Personnel are set forth on Exhibit H. The Design-Builder shall assure that the Construction Documents are prepared under the direct responsible charge of an architect or engineer, licensed in the State of Arizona and that the construction documents shall be signed and stamped by that architect or engineer. All inspection reports shall be signed and sealed by an architect or engineer licensed in the applicable discipline. Key Personnel of Design-Builder as listed in Exhibit H shall not be replaced except with the prior written approval of GILBERT. The Work shall be performed in accordance with standards of skill, expertise, and diligence of the design profession that are consistent with that of similarly situated architectural and engineering firms designing similar projects. This paragraph shall not relieve Design-Builder from its obligation to provide Design Work and Design Materials appropriate to the purposes of this Project. Nothing in this Contract shall be construed to create any contractual liability between GILBERT and any Subcontractor, provided however it is understood and agreed that GILBERT is an intended third-party beneficiary of all contracts for design or engineering services, all Subcontracts, purchase orders and other Contracts between the Design-Builder and third parties. The Design-Builder shall incorporate the obligations of this Contract into its respective Subcontracts, supply agreements and purchase orders.

- 2.2.2 Use of Design Materials and Construction Documents.

- 2.2.2.1 GILBERT shall have unlimited rights to copy and use in connection with the Project all Design Materials and Construction Documents, including the right to use same on the Project at no additional cost to GILBERT, regardless of degree of completion, provided that said services performed have been fully paid for as required by the terms of this Contract exclusive of amounts disputed by GILBERT in good faith. This right includes the right to use the Design Materials and Construction Documents to publicly bid the Project if GILBERT and the Design-Builder fail to agree on a GMP for the Project. The Design-Builder agrees to and does hereby grant to GILBERT and any assignee or successor of GILBERT as owner of the Project a royalty-free license to any Design Materials or Construction Documents as to which the Design-Builder may assert any rights under the patent or copyright laws. The Design-Builder hereby assigns outright and exclusively to GILBERT all copyrights in the design appearance of the Project. The Design-Builder, as part of its agreements with any Subcontractor or consultant, will secure such license and use rights from each such entity, and shall defend, indemnify and hold GILBERT and any successors or assigns harmless from any claims from such for claims by such entities for copyright or patent infringement.
- 2.2.2.2 GILBERT shall indemnify and hold harmless the Design-Builder, its Subcontractors, consultants, and their respective agents and employees from and against all claims, liabilities, demands, actions, costs and expenses (including attorneys' and experts' fees and costs) (collectively, "Claims") arising from any use by GILBERT, its successors or assigns of such Design Materials or Construction Documents if reuse, modifications or amendments of any such Design Materials or Construction Documents are made without the prior consent and involvement of the Design Builder.

2.2.3 Patents, Trademarks, Copyrights

The Design-Builder shall pay, as a Cost of the Work, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design-Builder shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Indemnified Parties, and shall save the Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by GILBERT, other than pursuant to the recommendation or suggestion of the Design-Builder; provided however, if the Design-Builder has reason to believe that the design, process or product so specified is an infringement of a patent, the Design-Builder shall be responsible for any loss resulting unless the Design-Builder has provided GILBERT with prompt written notice of the Design-Builder's belief, and GILBERT has nevertheless elected to go forward with such design, process or product so specified.

2.3 LOCAL CONDITIONS; ENVIRONMENTAL SITE CONDITIONS

- 2.3.1 Local Conditions. The Design-Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions

bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design-Builder encounters subsurface or concealed conditions which differ materially from that which could reasonably have been determined from a site investigation by the Design-Builder on the date of this Contract or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then notice by the Design-Builder shall be given to GILBERT promptly before conditions are disturbed and in no event later than four (4) Days after the first observance of the conditions if a Change Order is contemplated by the Design-Builder due to such condition. Such materially different conditions may entitle the Design-Builder to an equitable adjustment in the GMP and/or Schedule pursuant to the Change Order provisions of this Contract.

- 2.3.2 Hazardous Materials. The Parties' agreement as to the handling of Hazardous Materials discovered at the Site (and not brought there by the Design-Builder or Subcontractors) is set forth in Exhibit M hereto, and the only duties and responsibilities of the Design-Builder in connection therewith are as therein specified, notwithstanding any other provision of this Contract.

2.4 DESIGN SERVICES

The Design Services are set forth in detail in Exhibit A.

- 2.4.1 Schematic Design Documents. The Design-Builder shall provide schematic design documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work prepared by the Design-Builder. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The schematic design documents shall include a conceptual site plan and preliminary building plans, sections and elevations. At the Design-Builder's option, the schematic design documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. These documents shall be presented to GILBERT for review and approval.
- 2.4.2 Design Development Documents. The Design-Builder shall provide design development documents based on the approved schematic design documents and updated budget for the Cost of the Work. The design development documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The design development documents shall include specifications that identify major material and systems and establish in general their quality levels. These documents shall be presented to GILBERT for review and approval.
- 2.4.3 Construction Documents. The Design-Builder shall provide Construction Documents based on the approved design development documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include drawings and specifications that establish

in detail the quality levels of materials and systems required for the Project. These documents shall be presented to GILBERT for review and approval.

- 2.4.4 Review of Construction Documents and Field Conditions. Notwithstanding review and approval by GILBERT, the Design-Builder shall be responsible for all errors, inconsistencies or omissions in the Construction Documents. The Design-Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and conditions and other information known to the Design-Builder with the Construction Documents before commencing activities. In order to meet the schedule for this project, the Design-Builder may issue multiple Construction Document packages to permit phased construction of the Project. GILBERT will facilitate this process by reviewing such packages on a timely basis. Such review and approval by GILBERT shall not relieve the Design-Builder of its obligation to coordinate all aspects of the work.

2.5 GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

- 2.5.1 GILBERT's design-build budget for this Project is \$175,000. During the formulation of the project and execution of the design the Design-Builder shall maintain cost controls to deliver the Project GMP within the design-build budget. Design-Builder shall complete the design such that the design-build GMP for the Project designed by the Design-Builder will not exceed the design-build budget. The Design-Builder shall not proceed from one phase to another unless the construction cost estimate for such phase is in compliance with the design-build budget or any approved revised design-build budget. If at anytime during the design of the Project it appears that the cost of design and/or construction may exceed the design-build budget the Design-Builder shall immediately notify the PM/CM in writing. If the GMP provided by the Design-Builder at any phase exceeds the design-build budget, the Design-Builder shall value engineer the Project at no additional cost to GILBERT and to such extent that the GMP meets the design-build budget.
- 2.5.2 The Indirect Cost percentages associated with Items B - General Conditions, C - Fee, D1 – Bonds Allowance, D2 – Insurance Allowance, and E – Sales Tax of the Guaranteed Maximum Price (GMP) Cost Model given in Exhibit D shall be negotiated prior to the execution of the Contract and shall be used in subsequent GMP Proposal development.
- 2.5.3 At the stage of design as approved by GILBERT and PM/CM, the Design-Builder shall, if requested by GILBERT and PM/CM, propose a GMP, which shall be the sum of the estimated Cost of the Work (Items A1-A5) and the Indirect Costs (Items B - E) as defined in the "Guaranteed Maximum Price (GMP) Cost Model" given in Exhibit D.
- 2.5.4 The preconstruction services shall be shall be negotiated separately and shall include all costs, including indirect costs and fee, associated with that phase of the work.
- 2.5.5 The Total Project Cost is the sum of the GMP Proposal and Preconstruction Services as defined in the Guaranteed Maximum Price (GMP) Cost Model given in Exhibit D.
- 2.5.6 The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

- 2.5.6.1 A list of the Design Materials and Construction Documents, including all addenda, which were used in preparation of the GMP Proposal;
 - 2.5.6.2 A list of allowances and a statement of their basis;
 - 2.5.6.3 A list of the assumptions and clarifications made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the Design Materials and Construction Documents;
 - 2.5.6.4 The date of Substantial Completion upon which the GMP Proposal is based and the Schedule of Work upon which the date of Substantial Completion is based;
 - 2.5.6.5 A schedule of applicable alternate prices;
 - 2.5.6.6 A schedule of applicable unit prices;
 - 2.5.6.7 A statement of Additional Services included, if any; and
 - 2.5.6.8 The time limit for acceptance of the GMP Proposal.
 - 2.5.6.9 A list of the proposed personnel or positions that the Design-builder intends to station on the jobsite to manage the work.
- 2.5.7 The Design-Builder shall meet with GILBERT and the PM/CM to review the GMP Proposal. In the event that GILBERT and PM/CM discover any inconsistencies or inaccuracies in the information presented, GILBERT and PM/CM shall promptly give written notice to the Design-Builder, who shall make appropriate adjustments to the GMP Proposal, its basis or both.
- 2.5.8 The GMP Proposal shall not become a part of this Contract until GILBERT accepts the GMP Proposal in writing by executing Change Order No. 1 on or before the date specified in the GMP Proposal for such acceptance.
- 2.5.9 Prior to GILBERT's acceptance of the Contractor's GMP Proposal, the Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Contract or as GILBERT and PM/CM may specifically authorize in writing.
- 2.5.10 Upon acceptance by GILBERT of the GMP Proposal, the GMP Proposal and its basis shall be set forth in Change Order No. 1. The GMP Proposal and the date of Substantial Completion shall be subject to modification by changes in the Work as provided in the Contract.

2.6 CONSTRUCTION SERVICES - COMMENCEMENT

If GILBERT and the Design-Builder agree upon a GMP, the Design-Builder shall furnish construction and construction administration for the Work for the Project in accordance with the terms and conditions of this Contract. The Construction Phase will commence upon the issuance by GILBERT of a written notice to proceed with construction. Construction shall not commence prior to execution of Change Order No. 1.

- 2.6.1 General. The Design-Builder shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.
- 2.6.2 Supervision. The Design-Builder shall supervise and direct the Work in accordance with its

best skill and attention. The Design-Builder shall be solely responsible for and have control over design and construction means, methods, techniques, sequences and procedures. The Design-Builder shall be responsible to GILBERT for the acts and omissions, negligence, fault or omission of the Design-Builder, the Design-Builder's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Design-Builder. The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than the Design-Builder.

- 2.6.3 Coordination. The Design-Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.
- 2.6.4 Cooperation. The Design-Builder shall assist GILBERT's staff and PM/CM, and reasonably cooperate with GILBERT's legal and financial Consultants and all other designated representatives during the design and construction of the Project.
- 2.6.5 Management. The Design-Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work.
- 2.6.6 Reports. The Design-Builder shall prepare and submit to GILBERT, during both the Design Phase and the Construction Phase, monthly progress reports on the Work accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to GILBERT. Such reports shall be furnished at the time of submission of each monthly Application for Payment. As part of such report, the Design-Builder shall provide an updated CPM Schedule illustrating the progress which has been made, and specifically whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth the Design-Builder's projected progress for the forthcoming month.
- 2.6.7 Subcontractor Selection Plan: *[NEED TO INSERT DESIGN-BUILDER'S SELECTION PLAN]*
- 2.6.8 **FOR CONSTRUCTION WORK AT MULTIPLE LOCATIONS:** Multiple Locations: The street or physical address of each separate location at which the construction will be performed is as follows: Mesquite Aquatic Center, Greenfield Pool, Williams Field Pool and Perry Pool. Each subcontract entered into shall include information at which construction work will be performed under that subcontract.

2.7 CONSTRUCTION SERVICES - USE OF SITE

The Design-Builder shall, prior to on-site testing and inspection activities and prior to on-site

mobilization for demolition and construction, prepare a mobilization plan for GILBERT's review and approval based upon information provided to the Design-Builder by GILBERT from time to time concerning the anticipated availability of the Site or portions thereof for tests and inspections to be performed in connection with the Project. The foregoing mobilization plan shall be revised from time to time as necessary to incorporate additional information on site availability provided by GILBERT. The Design-Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment. The Design-Builder shall at all times confine its access and use of the Site to the areas designated by GILBERT from time to time as being delivered and available to the Design-Builder. Notwithstanding any other provision of this subsection, GILBERT acknowledges that the Schedule was developed based on certain representations of GILBERT regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Design-Builder's activities on a timely basis, the Design-Builder may be entitled to an equitable adjustment in the GMP and/or Schedule in accordance with the Change Order provisions of this Contract.

2.8 CONSTRUCTION SERVICES - RUBBISH; DEBRIS; CLEANUP

During the performance of all on-site Work, the Design-Builder shall at all times, as a Cost of the Work, keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of GILBERT, the Design-Builder shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, the Design-Builder shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site ready for occupancy. If the Design-Builder fails to clean up as provided in the Contract Documents, GILBERT may do so and the cost thereof shall be charged to the Design-Builder as a Cost of the Work.

2.9 CONSTRUCTION SERVICES - SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

2.9.1 Documents and Samples at the Site. From and after commencement of the Construction Work, the Design-Builder shall maintain at the site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Design Phase and Construction Phase. In addition, the Design-Builder shall maintain at the site approved shop drawings, product data, samples and similar required submittals. These shall be provided to GILBERT upon completion of the Work.

2.9.2 Shop Drawings, Product Data and Samples.

2.9.2.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design-Builder proposes to conform the construction to the Construction Documents.

2.9.2.2 The Design-Builder shall submit Shop Drawings, Product Data, Samples and similar submittals to PM/CM for review. PM/CM shall conduct such review so as to not delay the work. If Design-Builder believes PM/CM's review of Shop Drawings, Product Data, Samples and similar submittals is causing a delay in the Work, Design-Builder shall notify PM/CM in writing within 48 hours of the event causing the delay.

2.9.3 Responsibility. The Design-Builder shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by the PM/CM's review and comment on Shop Drawings, Product Data, Samples or similar submittals unless the Design-Builder has specifically informed the PM/CM of such deviation at the time of the submittal and the PM/CM has given written approval to the specific deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the PM/CM's review and comment thereof.

2.10 CONSTRUCTION SERVICES - TESTS AND INSPECTIONS

2.10.1 Initial Tests and Inspections. Tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Applicable Laws or normal construction practices shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to GILBERT, or with the appropriate public authority, and the costs of such tests, inspections and approvals shall be a Cost of the Work. The Design-Builder shall give the PM/CM timely notice of when and where tests and inspections are to be made so that the PM/CM may observe such procedures. All costs of tests, inspections or approvals imposed upon the Design-Builder by Applicable Laws, which do not become requirements until after establishment of the GMP shall be an increase to the GMP in accordance with the Change Order provisions of this Contract.

2.10.2 Additional Tests and Inspections. If GILBERT or public authorities having jurisdiction determine that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.10.1, the PM/CM will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to GILBERT, and the Design-Builder shall give timely notice to the PM/CM of when and where tests and inspections are to be made so the PM/CM may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be paid as a Cost of the Work, subject to the limitations set forth in Section 2.12 hereof. If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents, the costs thereof shall be an increase to the GMP in accordance with the Change Order provisions of this Contract.

2.10.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design-Builder and promptly delivered to the PM/CM.

2.10.4 Timing of Testing. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.11 CONSTRUCTION SERVICES - UNCOVERING OF CONSTRUCTION WORK

- 2.11.1 Uncovering. If a portion of the Construction Work is covered contrary to the PM/CM's written request (such notice to be given in sufficient time in advance so as not to delay the Construction Work) or to requirements of the Contract Documents, it must, if required in writing by the PM/CM, be uncovered for the PM/CM's observation and be replaced without change in the Schedule or GMP; the costs of such uncovering and replacement shall be Cost of the Work.
- 2.11.2 Covering of Work Requested to be Observed. If a portion of the Construction Work has been covered which the PM/CM has not specifically requested to observe prior to its being covered, the PM/CM may request to see such Construction Work and it shall be uncovered by the Design-Builder. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to GILBERT and shall increase the GMP. An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, the Design-Builder shall pay such costs as Cost of the Work, unless such condition was caused by GILBERT or a Separate Contractor in which event GILBERT shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given.

2.12 CONSTRUCTION SERVICES - CORRECTION OF WORK

- 2.12.1 Work Rejected by GILBERT. The Design-Builder shall promptly correct Construction Work rejected by the PM/CM or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design-Builder shall bear the costs of correcting such rejected Construction Work, as a Cost of the Work, including additional testing and inspection and compensation for services and expenses of GILBERT made necessary thereby.
- 2.12.2 Warranty. If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties under the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design-Builder shall correct it promptly after receipt of written notice from GILBERT to do so unless GILBERT has previously given the Design-Builder a specific written acceptance of such condition after GILBERT has been specifically informed in writing by the Design-Builder that the condition is not in accordance with the Contract Documents. This period of one year shall be extended with respect to portions of the Work first performed after Substantial Completion to one year after Substantial Completion of such Extended Work. This obligation shall survive acceptance of the Work under the Contract Documents and termination of this Contract. GILBERT shall give such notice promptly after discovery of the condition. Such costs shall be payable as provided in Section 5.1. During the one-year period for the correction of the Work, GILBERT shall give written notice promptly after the discovery of the condition. If GILBERT fails to notify the Design Builder of a condition GILBERT has discovered and give the Design Builder an opportunity to make the correction, GILBERT waives the rights to require correction by the Design Builder and to make a claim for breach of warranty.
- 2.12.3 Removal of Work. The Design-Builder shall remove from the Site portions of the Construction Work, which are not in accordance with the requirements of the Contract Documents and are

neither corrected by the Design-Builder nor accepted by the PM/CM. The costs incurred in removing such Work shall be a Cost of the Work.

- 2.12.4 Failure to Correct Nonconforming Work. If the Design-Builder fails to correct nonconforming Construction Work within five (5) Days, or other time as may be mutually agreed by the parties, GILBERT may correct it in accordance with the terms of this Contract. GILBERT may remove and store the salvable materials or equipment at the Design-Builder's expense. If the Design-Builder does not pay costs of such removal and storage within five (5) Days after written notice, GILBERT may sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design-Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs, which the Design-Builder should have borne, the Design-Builder shall pay such excess to GILBERT; if such proceeds are in excess of the costs, which the Design-Builder should have borne, such excess shall be paid by GILBERT to the Design-Builder. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Substantial Completion, such costs shall be payable as provided in Section 2.15.2.
- 2.12.5 Damaged or Destroyed Work. The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of GILBERT or Separate Contractors caused by the Design-Builder's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Substantial Completion, such costs shall be payable as provided in Section 5.1.
- 2.12.6 No Limitation. Nothing contained in this Section 2.12 shall be construed to establish a period of limitation with respect to other obligations, which the Design-Builder might have under the Contract Documents. Establishment of the time period of one year as described in Section 2.12.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.
- 2.12.7 Acceptance of Nonconforming Work. If GILBERT prefers to accept Work which is not in accordance with the requirements of the Contract Documents, GILBERT may do so instead of requiring its removal and correction.

2.13 CONSTRUCTION SERVICES - SAFETY PRECAUTIONS AND PROGRAMS; PROTECTION OF PROPERTY

- 2.13.1 Site Safety. The Design-Builder shall prepare and submit a site specific safety plan and shall be responsible for complying with all OSHA regulations and for providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs. Design-Builder shall prepare and submit to PM/CM a copy of its written safety program prior to commencement of Construction Work. The safety program shall include requirements and procedures to assure the site and adjacent areas affected by the Work are safe in all material respects and decrease

the likelihood of accidents. The Design-Builder shall take all steps necessary to implement and enforce the safety program. PM/CM shall have the right, but not the obligation, to stop the Work if PM/CM has actual knowledge of a safety hazard on the Site.

- 2.13.2 Traffic Control. Design-Builder's operations shall be in accordance with Section 10-5 of the Gilbert Municipal Code and the Manual on Uniform Traffic Control Devices, Latest Edition. These operations shall cause no unnecessary inconvenience to the public and public access rights shall be considered at all times. Unless otherwise authorized in the Specifications or on a temporary basis by PM/CM, traffic shall be permitted to pass through the Work area. Design-Builder shall coordinate with the various agencies to include governmental, commercial and public, so that adequate services are maintained.
- 2.13.3. Police Officers. The Design-Builder will coordinate and schedule off-duty police officers with the Town of Gilbert as a part of the Design-Builder's traffic control work. GILBERT will pay for the officers directly with no payment to the Design-Builder for this item. The Design-Builder will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the Design-Builder fails to prosecute the work in a timely and orderly fashion, GILBERT shall notify the Design-Builder and reserves the right to negotiate a corresponding deductive change order with the Design-Builder based upon the cost of \$65/hour/officer that GILBERT will incur for the off duty officers.
- 2.13.4 Notices. In connection with the performance of the Work, the Design-Builder shall give notices and comply with Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.
- 2.13.5 Remedy of Damage. The Design-Builder shall promptly remedy damage and loss to property caused in whole or in part by the Design-Builder or anyone directly employed by or in control of Design-Builder and for whose acts Design-Builder may be liable and for which the Design-Builder is responsible, except damage or loss attributable to acts or omissions of GILBERT or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Article 7 (Insurance, Bonds and Indemnification); provided, however, that the Design-Builder's obligations hereunder shall include only those costs necessary to repair property damaged or lost (except to the extent professional liability insurance proceeds are available therefore pursuant to the provisions of Article 7 (Insurance, Bonds and Indemnification). All costs incurred by the Design-Builder in connection with its obligations under this Section shall be Cost of the Work, but shall not increase the GMP.
- 2.13.4 Security. The Design-Builder shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. The Design-Builder shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. The Design-Builder shall take all precautions and measures as may be reasonably necessary to secure the Project at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

- 2.13.5 **Damage to Property at the Site.** The Design-Builder shall be responsible for any and all damage or loss to property at the Site, except to the extent caused by the acts or omissions of GILBERT or its representatives, employees or agents and not covered by required insurance. The costs and expenses incurred by the Design-Builder under this Article shall be paid as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles.
- 2.13.6 **Damage to Property of Others.** The Design-Builder shall avoid damage, as a result of the Design-Builder's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of GILBERT. The Design-Builder shall repair any such damage caused by the operations of the Design-Builder, which costs shall be paid as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.
- 2.13.7 **Failure of Design-Builder to Repair Damage.** If the Design-Builder fails to commence the repair of damage to property as set forth in this Article, and diligently pursue such repair, then GILBERT, after ten (10) Days prior written notice to the Design-Builder and acknowledgement of receipt (provided the Design-Builder has not commenced such repair during such ten (10) Day period, may elect to repair such damages with its own forces and to deduct from payments due or to become due to the Design-Builder amounts paid or incurred by GILBERT is correcting such damage.
- 2.13.8 **Emergencies.** If an emergency affecting the safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional costs or extensions of time claimed by the Design-Builder on account of an emergency not caused by the fault or neglect of the Design-Builder shall be determined as provided in Article 6 (Changes in the Work; Claims) hereof.

2.14 CONSTRUCTION SERVICES - LABOR AND MATERIALS; LIENS.

- 2.14.1 Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- 2.14.2 The Design-Builder shall not place and shall not permit any Subcontractors or laborers to place liens on the Project covering any portion of the Work for which GILBERT has made payment to the Design-Builder. If such liens are imposed, the Design-Builder will satisfy, discharge or bond such liens within ten (10) Days after written notice from GILBERT of the existence of such liens. If the Design-Builder fails to satisfy, discharge or bond such liens within such ten (10) Day period, GILBERT may bond such liens and charge the cost of the bond and any other reasonable costs in connection therewith to the Design-Builder as well as withhold from the Design-Builder the amount of such lien under the provisions of Section 5.5.

2.15 CONSTRUCTION SERVICES - WARRANTY

- 2.15.1 The Design-Builder warrants to GILBERT that any and all materials, equipment and furnishings incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Such warranty shall extend for a period of one (1) year from the date of final completion. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes damage or defect caused by abuse, modifications not executed by the Design-Builder or its subcontractors, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.
- 2.15.2 All warranties and guarantees of Subcontractors and Suppliers with respect to any portion of the Work shall be obtained by the Design-Builder so as to extend for the benefit of and be available to be asserted in the name of GILBERT. The Design-Builder shall use its best efforts to obtain from all Subcontractors and Suppliers guarantees and warranties with terms and periods customarily available in the industry. During the Design-Builder's warranty period, the Design-Builder shall enforce such warranties and guarantees on behalf of GILBERT. The Contractor shall cause its Subcontractors and Suppliers to include in their subcontracts and purchase orders the requirement that all guarantees and warranties be obtained so as to extend for the benefit of, and be available to be asserted in the name of, GILBERT, which obligation shall be specifically incorporated by reference into any subcontracts, or any lower tier subcontracts or purchase orders. To the extent that any such warranty or guarantee would be voided by reason of the Design-Builder's negligence or other fault in incorporating material or equipment into the Work, the Design-Builder shall be responsible for correcting such defect and shall nevertheless be responsible pursuant to warranty obligations set forth in this Section 2.15.

2.16 TAXES

The Design-Builder shall pay, as Cost of the Work, all existing and future applicable Federal, State and local sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work (excluding taxes based on the Design-Builder's income). In the event the Design-Builder is obligated to pay any new or increased taxes or duties arising after the date hereof, the amount of such new or increased taxes shall increase the GMP pursuant to the Change Order provisions of this Contract. In the event the Design-Builder receives the benefit of a tax exemption or tax reduction taking effect after the date hereof, the amount of such exemption or reduction shall decrease the GMP pursuant to the Change Order provisions of this Contract.

3.0 GILBERT'S DUTIES AND RESPONSIBILITIES

3.1 INFORMATION AND SERVICES REQUIRED OF GILBERT

- 3.1.1 GILBERT Designation of Authorized Representative: GILBERT shall designate, from time to time, one or more representatives authorized to act on GILBERT's behalf with respect to the Project, together with the scope of his/her respective authority. Such designations as of the date

hereof are set forth on Exhibit J hereto. Functions that this Contract provides will be performed by GILBERT can be delegated by GILBERT only by written notice to the Design-Builder from GILBERT. Exhibit J may be amended from time to time by GILBERT pursuant to written notice of such amendment to the Design-Builder. The Design-Builder shall not be entitled to rely on directions (nor shall it be required to follow directions) from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Contract. Directions and decisions made by Authorized Representatives of GILBERT shall be binding on GILBERT.

- 3.1.2 Communication: During the term of this Contract, GILBERT shall communicate with Subcontractors, suppliers and others performing any part of the Work only through the Design-Builder's Authorized Representative designated on Exhibit H hereto, as may be amended only by written approval from GILBERT.
- 3.1.3 Consent and Approval: Whenever GILBERT's consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents with respect to the Design-Builder's performance of the Work, and this Contract does not expressly state that GILBERT may act in its sole discretion, such comment, consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever GILBERT's cooperation is required by the Design-Builder in order to carry out the Design-Builder's obligations hereunder, GILBERT agrees that it shall act in good faith in so cooperating with the Design-Builder. GILBERT shall cooperate fully with the Design-Builder and shall furnish comments, decisions, information, and approvals required by this Contract in a timely manner. The Schedule shall include time periods within which GILBERT is required to give its comment, consent, approval, satisfaction or determination. If a time period is not set forth, a reasonable time period shall be permitted.

3.2 GILBERT'S RIGHT TO STOP THE WORK OR CARRY OUT WORK

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Contract or fails to carry out the Work in accordance with the Contract Documents, GILBERT, by written order signed by GILBERT, may deliver a notice to the Design-Builder setting forth that such failure is occurring and has occurred, and demanding that the Design-Builder commence a cure of such failure within seven (7) Days and diligently pursue such cure thereafter. In the event that the cure is not commenced and pursued diligently, GILBERT may, by written notice to the Design-Builder, order the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that the right of GILBERT to stop the Work shall not give rise to a duty on the part of GILBERT to exercise this right for the benefit of the Design-Builder or any other person or entity and shall not give rise to any liability of GILBERT to the Design-Builder resulting from any delay (except to the extent that such order is found to be improper). At GILBERT's option, at the expiration of such seven (7) day period, GILBERT may without prejudice to other remedies GILBERT may have, correct such deficiencies and carry out the work. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design-Builder the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to the Design-Builder are insufficient to cover such amounts, the Design-Builder

shall pay the difference to GILBERT.

4.0 TIME

4.1 PROGRESS AND COMPLETION

The parties agree the time limits stated in the Contract Documents, as the same may be amended and updated by the Parties, are of the essence of this Contract.

4.2 SCHEDULE OBLIGATIONS

- 4.2.1 Contract Schedule: The planning, design, construction and completion of the Project shall be undertaken and completed in accordance with the Schedule, which shall define major design and construction milestones, their sequences and elapsed completion time from the date of the Notice to Begin Design. The Schedule shall not be modified except by an approved Contract Change Order.
- 4.2.2 Prosecution of the Work: The Design-Builder shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Schedule. If the delay is an Unexcused Delay, the Design-Builder shall prepare a recovery schedule for the PM/CM's review and approval, showing how the Design-Builder will compensate for the delays and achieve Substantial Completion by the date shown on the Schedule. If the Design-Builder is unable to demonstrate how it will overcome Unexcused Delays, the PM/CM may order the Design-Builder to employ such extraordinary measures as are necessary to bring the Work into conformity with the Substantial Completion Date set forth therein, the costs of which shall be paid as Cost of the Work. If the delay is an Excusable Delay, GILBERT shall either (a) authorize an equitable extension in the Schedule to account for such delay, and equitably adjust the GMP on account of such delay, to the extent permitted by Article 6; or (b) request that the Design-Builder prepare a recovery schedule showing how (if possible) the Design-Builder can achieve Substantial Completion by the date shown on the Schedule, and equitably adjust the GMP in accordance with the Change Order provisions of this Contract on account of any extraordinary activities required of the Design-Builder on account of such recovery schedule.

4.3 PRECONSTRUCTION ACTIVITIES

Within five (5) Days after execution of this Contract, the Design-Builder shall submit to the PM/CM for review a detailed, resource loaded, critical path method schedule of preconstruction activities, by expanding the preconstruction activities set forth on the Schedule. This preconstruction schedule shall be prepared using Primavera compatible software, and shall show in sufficient detail the starting and completion time sequences of design and Subcontract award activities of the Design-Builder, and identify all interface activities of GILBERT.

4.4 CRITICAL PATH ACTIVITIES

To the extent the Design-Builder completes activities on the critical path earlier than scheduled, the savings in time on account thereof shall belong solely to the Design-Builder.

4.5 CONSTRUCTION ACTIVITIES

At such time as the Construction Documents, or any package thereof, are complete, the Design-Builder shall submit to GILBERT for incorporation into the Contract Documents, a revised Schedule, which will expand the Schedule approved to date, but which will not, in and of itself, change the date of Substantial Completion of the Project. This revised Schedule shall show in complete detail starting and completion time of detail activities of each of the various trades, the sequence of the Work and all significant activities.

4.6 EXTENSIONS OF TIME

- 4.6.1 General: An extension in the scheduled date of Substantial Completion will only be granted in the event of Excusable Delays affecting Work activities on the critical path. The Design Builder shall be entitled to general condition costs related to the excusable delay. The Design Builder must submit evidence reasonably satisfactory to GILBERT substantiating such costs. Such adjustment to the contract sum and substantial completion date shall be issued in a change order.
- 4.6.2 Excusable Delays: To the extent any of the following events results in an actual delay in the Work affecting Work activities on the critical path, such shall constitute an "Excusable Delay" (to the extent not set forth below, a delay will be considered an "Unexcusable Delay"):
- 4.6.2.1 Delays resulting from Force Majeure.
 - 4.6.2.2 Differing, unusual or concealed site conditions that could not reasonably have been anticipated by the Design-Builder in preparing the Schedule, including, without limitation, archaeological finds, underground foundations, abandoned utility lines and water conditions.
 - 4.6.2.3 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by the Design-Builder.
 - 4.6.2.4 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Contract;
 - 4.6.2.5 Delays occurring due to the acts or omissions of GILBERT and those within the control of GILBERT.
 - 4.6.2.6 Delays occurring due to the acts or omissions of a utility, so long as Design Builder has coordinated with the utility causing the delay pursuant to Paragraph 2.6.3 and the delay occurs despite reasonable steps taken by Design Builder to avoid the delay.
 - 4.6.2.7 Delays resulting from non-typical weather conditions which make it unreasonable to perform the Work in accordance with the schedule. The contractor's construction progress schedule shall be formulated with a written allowance for adverse weather conditions normally anticipated for the location of the project site. The Contract time has been predicated assuming a normal amount of adverse weather. The weather days

will be calculated utilizing National Oceanic and Atmospheric Administration (NOAA) data for the local area and will be based on a ten-year average for the number of days per month with rainfall greater than one quarter of one inch. The contractor will provide copies of the NOAA data and the summation to the PM/CM with the CPM schedule. The weather days shall be shown on the schedule, and if not used will become float at the end of the schedule. No less than five (5) Working Days shall be included in the Design-Builder's construction schedule. In the event that bad weather conditions are forecasted the Design-Builder shall take necessary precautions to protect the Work.

- 4.6.3 Requirements for Schedule Adjustment due to Excusable Delays: In order to obtain an extension of time due to an Excusable Delay, the Design-Builder shall comply with the following requirements:

The Design-Builder shall notify the PM/CM of the Excusable Delay in writing as soon as practicable, but in no event more than four (4) Days after the Design-Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design-Builder expects to be delayed. After the cessation of the Excusable Delay, the Design-Builder shall notify the PM/CM in writing of the number of Days the Design-Builder believes that its critical path activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by GILBERT, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

- 4.6.4 Decision by GILBERT: Within ten (10) Days after cessation of an event-giving rise to either an Excusable Delay or Unexcusable Delay, the parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Unexcusable Delay. In the absence of agreement between the parties as to the then current status of Excusable Delays and Unexcused Delays, the PM/CM will provide the Design-Builder with written notice of PM/CM's determination of the respective number of Days of Excusable Delay and/or Unexcusable Delay within ten (10) Days after receipt by the PM/CM of the Design-Builder's written request for such determination. The issuance by the PM/CM of such a determination shall not, however, be deemed a concurrence by the Design-Builder of the matters set forth therein, and the Design-Builder may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, the Design-Builder may take such acceleration or other measures on account of the PM/CM's determination of Unexcusable Delay, and if completion of the dispute resolution procedures results in the PM/CM's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by GILBERT as an increase to the GMP in accordance with the Change Order provisions of this Contract.

4.7 ADJUSTMENT IN GMP ON ACCOUNT OF EXTENSIONS OF TIME

Concurrent Delays: To the extent the Design-Builder is entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Design-Builder or by an Unexcusable Delay, the Design-Builder shall not be entitled to any additional costs for the period of such concurrency.

4.8 LIQUIDATED DAMAGES

- 4.8.1 General: The Design-Builder and GILBERT acknowledge that in the event that the Design-Builder fails to achieve Substantial or Final Completion of the Project by the dates established therefore in the Schedule, as adjusted, GILBERT will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that GILBERT would incur as a result of late Substantial Completion or Final Completion of the Project. Such liquidated damages shall be the sole and exclusive remedy of GILBERT for late completion of the Project, and GILBERT hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.
- 4.8.2 Amount of Liquidated Damages to Substantial Completion: If the Design-Builder fails to achieve Substantial Completion of the Work on or before the date of Substantial Completion set forth in the Schedule, as adjusted, for any reason other than Excusable Delays, the Design-Builder shall pay to GILBERT liquidated damages in the amount of four hundred and thirty and 00/100 Dollars (\$430) per Day for each Day the date of Substantial Completion is delayed beyond the date of Substantial Completion set forth in the Schedule. Payment of liquidated damages shall be made contemporaneously with GILBERT's required payment to the Design-Builder at Substantial Completion, and such payments may be offset against each other. Notwithstanding such offset, the Design-Builder reserves the right to challenge its liability for liquidated damages pursuant to the dispute resolution procedures of this Contract.
- 4.8.3 Amount of Liquidated Damages to Final Completion: If the Design-Builder fails to achieve Final Completion of the Work on before the date of Final Completion set forth in the schedule, as adjusted, for any reason other than Excusable Delays, the Design-Builder shall pay to GILBERT liquidated damages in the amount of four hundred and thirty and 00/100 dollars (\$430) per Day for each Day the date of Final Completion is delayed beyond the date of Final Completion set forth in the Schedule. Payment of liquidated damages shall be made contemporaneously with GILBERT's required payment to the Design-Builder at Substantial Completion, and such payments may be offset against each other. Notwithstanding such offset, the Design-Builder reserves the right to challenge its liability for liquidated damages pursuant to the dispute resolution procedures of this Contract.

5.0 PAYMENT AND COMPLETION

5.1 GUARANTEED MAXIMUM PRICE

GILBERT shall pay the Design-Builder in current funds for the Design-Builder's performance of this Contract the Cost of the Work (as defined in Exhibit L hereto) and the Fee; provided, however, that the sum of the Cost of the Work and the Fee shall not exceed the GMP, as adjusted.

5.2 SCHEDULE OF VALUES

As part of the GMP development, the Design-Builder shall submit to the PM/CM, and the

parties shall agree upon, a schedule of values, setting forth the various portions of the Work, and the portions of the GMP allocated to each portion. This schedule of values shall be used as a basis for payment.

5.3 APPLICATIONS FOR PAYMENT

The Design-Builder shall deliver to the PM/CM on a monthly basis an Application for Payment covering the Cost of Work and Fee applicable to the Work performed during such month. With each Application for Payment the Design-Builder shall make available for audit by the PM/CM at Design-Builder's office such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred on account of Cost of the Work during such month and the percentage of completion of each category of Work. Payments due and unpaid after thirty-five (35) days from the date of submittal of the Application for Payment shall bear interest at the rate of prime plus two percent (2%).

5.4 AMOUNT OF PROGRESS PAYMENTS

GILBERT shall pay the Design-Builder the actual Cost of the Work (including payment for off-site stored materials) through the period covered by the Application for Payment, less retainage as set forth in Section 5.5 below, provided that the payment amount before retainage will not exceed the percentage of completion of the Work multiplied by the GMP (excluding items of the GMP not subject to retainage), all as set forth in the schedule of values. The Fee shall be paid in accordance with the Fee Payment Schedule set forth on Exhibit B.

5.5 RETAINAGE

5.5.1 With respect to Design-Builder's design fee, permit or utility fees and premiums for bonds and insurance, no retainage shall be withheld.

5.5.2 With respect to Construction Work, GILBERT shall retain ten per cent (10%) of the amount of each estimate until Final Completion and acceptance of all material, equipment and work covered by the Contract Documents. An estimate of the Work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time GILBERT or GILBERT's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the Work that are not approved for payment under the Contract Documents. GILBERT may withhold an amount from the progress payment sufficient to pay the expenses GILBERT reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before Twenty-one days after the estimate of the Work shall be deemed received by GILBERT for the submission, review or approval of the estimate of the work.

5.5.2.1 When the construction is fifty per cent completed, the Design-Builder may make a written request that one-half of the amount retained including any securities substituted pursuant to Subsection 5.5.2.3 shall be paid to the Design-Builder provided the Design-Builder is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After the construction Work is fifty per cent completed, no more than five per cent (5%) of the amount of any subsequent progress payments made under the Contract Documents may be retained

providing the Design-Builder is making satisfactory progress on the Project. Except that if at any time GILBERT determines satisfactory progress is not being made, ten per cent (10%) retention shall be reinstated for all progress payments made under the Contract Documents after the determination.

- 5.5.2.2 On completion and acceptance of the Work, except as qualified in Subsection 5.5.2.3, payment may be made in full, including retained percentages, less authorized deductions. In preparing estimates, the material and equipment delivered on the Site to be incorporated in the Work shall be taken into consideration in determining the estimated value by GILBERT.
- 5.5.2.3 The retainage required by Paragraph 5.5.2.1 shall be retained by GILBERT as a guarantee for complete performance of the contract, to be paid to the Design-Builder within sixty days after completion or filing notice of completion of the Work. Retention of payments by an agent longer than sixty days after Final Completion and acceptance requires a specific written finding by GILBERT of the reasons justifying the delay in payment. GILBERT may not retain any monies after sixty days that are in excess of the amount necessary to pay the expenses GILBERT reasonably expects to incur in order to pay or discharge the expenses determined by GILBERT in the finding justifying the retention of monies. In lieu of the retention provided in this section, GILBERT, at the option of the Design-Builder, shall accept as a substitute an assignment of time certificates of deposit of banks licensed by this state. Securities of or guaranteed by the United States of America, securities of this state, securities of counties, municipalities and school districts within this state or shares of savings and loan institutions authorized to transact business in this state, in an amount equal to the retainage required by Paragraph 5.5.2.1 as a guarantee for complete performance of the Work. If GILBERT accepts substitute security as described in this Subsection for the ten percent retention, the Design-Builder is entitled to receive all interest or income earned by this security as it accrues and all such security in lieu of retention shall be returned to the Design-Builder by GILBERT within sixty days after Final Completion and acceptance of the Work covered by the Contract Documents if the Design-Builder has furnished GILBERT satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the Work. GILBERT will not accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to setoff against either GILBERT or the Design-Builder in relationship to the certificates or shares assigned.

5.6 PAYMENT FOR ON-SITE AND OFF-SITE STORED MATERIALS

Design-Builder shall provide proper storage facilities and exercise such measures as will insure the preservation of the specified quality and fitness of all Materials and equipment to be used in the Work. Stored Materials shall be located so as to provide reasonable access for inspection. That portion of the right-of-way not required for public travel may be used for storage purposes unless prohibited by the other provisions of the Project Specifications. Any additional space required shall be provided by Design-Builder at no cost to GILBERT. Protection of Materials and equipment stored on the site shall be the responsibility of Design-Builder. GILBERT

reserves the right to direct Design-Builder to provide proper means of protection for Materials if such is deemed advisable by GILBERT PM/CM; however, the exercise of or failure to exercise this right shall not be deemed to relieve Design-Builder of his primary responsibility for protecting the material and equipment. Design-Builder shall provide suitable warehouses or other adequate means of protection for such of the Materials and equipment as require storage or protection. Design-Builder shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. Design-Builder shall maintain all material and equipment in accordance with the manufacturer's instructions. The cost of replacing any material or equipment damaged in storage shall be borne by Design-Builder, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve Design-Builder of his primary responsibility. No motor shall be left uncovered or unprotected. Payments for Materials or equipment stored off the site shall be conditioned upon submission by Design-Builder of bills of sale to establish GILBERT's title to such Materials or equipment and certificate of insurance for storage in a bonded warehouse or facility agreeable to GILBERT.

5.7 TITLE TO CONSTRUCTION WORK

The Design-Builder warrants that title to all Construction Work covered by an Application for Payment shall pass to GILBERT no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from GILBERT shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Construction Work.

5.8 SUBSTANTIAL COMPLETION

When the Design-Builder considers that the Work is Substantially Complete, the Design-Builder shall make a written request to the PM/CM to perform a Substantial Completion Inspection. Within five (5) days of the receipt of such request, PM/CM shall conduct the inspection or inform Design-Builder that the Work is not ready for the inspection. A Substantial Completion Inspection will be conducted when the Design-Builder states in writing that the construction phase Work is sufficiently complete in accordance with the Contract Documents that the Work can be utilized for the purposes it was intended without any outstanding concurrent ongoing Work at the site. A punch list will be developed during this inspection documenting incomplete or deficient work items. If work is deemed to be substantially complete, the PM/CM will issue a Certificate of Substantial Completion (Form 2.8.2.2.1) and attach the punch list. Design-Builder shall be present at the Substantial Completion Inspection.

After the Substantial Completion Inspection the PM/CM shall notify Design-Builder in writing of any deficiencies to be remedied prior to final acceptance by preparing a punch list. The Design-Builder shall proceed promptly to complete and correct Punch list items. Design-Builder shall remedy all items shown on the punch list prior to final acceptance. Failure to include an item on the Punch list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents. If GILBERT and the Design-Builder cannot agree as to the appropriate date of Substantial Completion, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Contract.

Notwithstanding such disagreement, the Design-Builder shall diligently proceed with completion of the Punch list items.

When Design-Builder believes that the punch list items have been addressed, he shall request in writing a Final Inspection. Within five (5) days of the receipt of such request, PM/CM shall make a Final Inspection or inform Design-Builder that the Work is not ready for Final Inspection. Design-Builder shall be present at the Final Inspection. The purpose of the Final Inspection is to determine whether the Work has been completed in accordance with the Contract Documents, including all Change Orders and all interpretations and instructions previously issued. If during the Final Inspection it is determined that the Design-Builder has not completed the punch list items, and a second final inspection is required, Design-Builder shall be charged for the cost of PM/CM for the second final inspection and any subsequent final inspections until such time as all punch list items are corrected.

5.9 PARTIAL OCCUPANCY OR USE

GILBERT may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer of the Project and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided GILBERT and the Design-Builder have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Contract Documents. Immediately prior to such prior occupancy, GILBERT, PM/CM and the Design-Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, certification of a designated portion of the Work by PM/CM as being Substantially Complete and occupancy of that portion thereafter by GILBERT shall neither release, or otherwise operate to excuse, Design-Builder from his duty to complete the remainder of the Work within the Contract Time including liability for liquidated damages.

5.10 FINAL COMPLETION AND FINAL PAYMENT

- 5.10.1 Final Completion: When the Design-Builder considers that the Work is Finally Complete, the Design-Builder shall so notify the PM/CM in writing. If the PM/CM determines Final Completion has occurred, PM/CM will issue the Certificate of Final Completion (Form 2.8.2.3.1) and forward to GILBERT's Representative. GILBERT will make final acceptance promptly after receiving PM/CM's recommendation by signing the Certificate of Final Completion unless GILBERT has reason to believe the Work is not ready for final acceptance. Prior to GILBERT executing a Certificate of Final Completion/Certificate of Occupancy, complete startup and commissioning of all equipment and systems including required operational training shall have been accomplished and the Design-Builder shall deliver to GILBERT all Operational and Maintenance Manuals necessary for GILBERT to assume responsibility for the operation and maintenance of that portion of the Work. If GILBERT and the Design-Builder cannot agree as to the appropriate date of Final Completion, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Contract.

Warranties required by the Contract Documents shall commence on the date of Final Completion or designated portion thereof unless otherwise provided in the Contract Documents.

5.10.2 Conditions Precedent to Final Payment: Neither final payment nor any final release of retainage shall become due until the Design-Builder submits to GILBERT:

5.10.2.1 Design-Builder's affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which GILBERT or GILBERT's property might be responsible or encumbered (less amounts withheld by GILBERT) have been paid or otherwise satisfied;

5.10.2.2 A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to GILBERT;

5.10.2.3 Consent of Surety to final payment;

5.10.2.4 If required by GILBERT, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by GILBERT, the Design-Builder may furnish a bond satisfactory to GILBERT to indemnify GILBERT against such lien; and,

5.10.2.5 Delivery to GILBERT of all warranties, operation and maintenance manuals, record drawings and other documents as required by Section 2.7 and the Contract Documents.

5.10.3 Delay in Final Completion: If after Substantial Completion of the Work, Final Completion is materially delayed through no fault of the Design-Builder or by the issuance of additional Change Orders or Change Directives by GILBERT, GILBERT shall, upon request of the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed. If the remaining balance for Work not fully completed is less than the retainage, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed shall be submitted by the Design-Builder to GILBERT, and such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims by either the Design-Builder or GILBERT.

5.10.4 Waiver of Claims at Final Payment: Acceptance of final payment by the Design-Builder, a Subcontractor or material supplier shall constitute a waiver of affirmative claims by that payee, except those previously made in writing and identified as unsettled at the time of final application for payment.

6.0 CHANGES IN THE WORK; CLAIMS

6.1 CHANGES

Changes in the Work shall be performed under applicable provisions of the Contract Documents and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to GILBERT or the Design-Builder, the applicable unit prices shall be equitably adjusted. No GMP adjustment on account of a Change Order shall include the Design-Builder's home office overhead or a formula allocation of indirect costs unless otherwise specifically allowed hereunder.

- 6.1.1 If changes in the Work result in an extension of the Contract Time, the cost of the change order must recognize additional general conditions due to the time extension.

6.2 CHANGE DIRECTIVES

The following procedures shall apply with respect to Change Directives:

- 6.2.1 Upon receipt of a Change Directive signed by the PM/CM, the Design-Builder shall promptly proceed with the change in the Work involved and advise the PM/CM of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the GMP or the Schedule. If the Design-Builder receives a written communication signed by the PM/CM which the Design-Builder believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from the PM/CM a written confirmation that such communication is in fact a Change Directive.
- 6.2.2 A Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder with the contents thereof, and shall convert the Change Directive to a Change Order.
- 6.2.3 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the GMP or Schedule, the method and adjustment shall be determined as provided in Sections 6.5 or 6.7 below, as applicable. In such case, the Design-Builder shall keep and present, in such form as the PM/CM may request, an itemized accounting, together with appropriate supporting data.
- 6.2.4 Pending final determination of cost to GILBERT, amounts not in dispute shall be included in Applications for Payment. The amount of credit to be allowed by the Design-Builder to GILBERT for a deletion or change, which results in a net decrease in the GMP, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Fee shall be figured on the basis of net increase, if any, with respect to that change.
- 6.2.5 If the PM/CM and the Design-Builder do not agree with the adjustment in the Schedule or the GMP, such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Contract.

6.3 CHANGE PROPOSALS

If the PM/CM requests the Design-Builder to submit a Change Proposal which would entitle the Design-Builder to an increase in the GMP for costs of preparation of such Change Proposal pursuant to the provisions of this Section 6.3, the Design-Builder shall first estimate the costs of preparing such Change Proposal and inform the PM/CM in writing of such costs. The PM/CM shall then direct the Design-Builder either to proceed with the Change Proposal or cancel the Change Proposal. If the PM/CM directs the Design-Builder to proceed with the Change Proposal and then elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred by the Design-Builder on account of such Change Proposal. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., the PM/CM directs that other Work be suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule and the GMP (including General Conditions) shall be made.

6.4 CLAIMS

In addition to submitting Change Proposals in response to the request of GILBERT, the Design-Builder may submit one or more claims in the form of Change Proposals for any requested adjustment in the GMP and/or Schedule permitted pursuant to the provisions of this Contract. In such cases, the Design-Builder shall give GILBERT written notice within ten (10) Days after it becomes aware of the event-giving rise to the Change Proposal. GILBERT shall have ten (10) Days after receipt of the Design-Builder's notice to either confirm or refute the basis for the Change Proposal. If either the Design-Builder or GILBERT becomes aware of an act or omission of the other which would give rise to a breach of contract action, such party shall notify the other within a reasonable time after becoming aware of such act or omission. Failure to give any notice required by this Article 6 shall be deemed a waiver of the right of the claiming party to recover, but only to the extent the delay in giving notice prejudices the rights of the nonclaiming party.

6.5 CHANGE ORDERS

- 6.5.1 GILBERT, without invalidating the Contract and without notification of sureties, may order extra Work, make changes by altering, or delete any portion of the Work as specified herein, or as deemed necessary or desirable by GILBERT. All such Work shall be executed under the conditions of the original Contract except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra Work.
- 6.5.2 In giving instructions, PM/CM shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the purposes of the Work. No extra Work or change shall be made unless in pursuance of a written order by PM/CM. Any claim for an addition to the Contract Price shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If Design-Builder claims that any instructions involve extra cost under the Contract, he shall within forty-eight (48) hours after the receipt of such instructions, provide written notice to PM/CM of such claim, and before proceeding to execute the Work, except in an emergency endangering life or property, and the procedure shall then be as provided to approve Change Orders.

- 6.5.3 It is mutually understood that it is inherent in the nature of municipal construction that some changes in the Plans and Specifications may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the Contract to recognize a normal and expected margin of change. PM/CM shall have the right to make such changes in the Plans and the character of the Work as may be necessary or desirable to insure the completion of the Work in the most satisfactory manner without invalidating the Contract.
- 6.5.4 Changes shall be incorporated in the written Change Order issued by GILBERT, which shall be written so as to indicate acceptance on the part of Design-Builder as evidenced by his signature.
- 6.5.5 If a Change Order provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:
- 6.5.5.1 Where the Work involved is covered by unit prices contained in the Schedule of Values, by application of the unit prices to the quantities of the items involved, as mutually agreed to by the Design-Builder and the PM/CM.
 - 6.5.5.2 By mutual acceptance of a unit price not contained in the Schedule of Values, or mutual acceptance of a lump sum price. The Design-Builder shall furnish PM/CM with an itemized cost breakdown together with supporting data including the quantities used in computing the unit price and/or lump sum price of the Work.
 - 6.5.5.3 Only when methods A and B above are exhausted, then on the basis of the Cost of Work plus a Design-Builder's Fee for overhead and profit, as described below. (Cost Plus Basis).
 - 6.5.5.4 Whenever the cost of any work is to be determined on a Cost Plus Basis, Design-Builder will submit on forms acceptable to the PM/CM, daily work sheets showing an itemized breakdown together with supporting data used to arrive at a final cost for the Work. No payment will be made for work not verified by the PM/CM. Final cost for the Change in the Work shall be reflected and formalized in a Change Order.
- 6.5.6 Allowable direct and indirect percentages for any Change Order are given in the Cost Model.
- 6.5.7 Upon receipt of a proposed Change Order, Design-Builder shall promptly proceed with the change in the Work and advise PM/CM in writing within seven (7) days of Design-Builder's agreement or disagreement with the method, if any, provided in the proposed Change Order for determining the proposed adjustment in the Contract Price or Contract Time. Failure to return the Change Order to PM/CM within seven (7) days indicates Design-Builder's agreement therewith, including adjustment in Contract Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- 6.5.8 If Design-Builder disagrees with the method for adjustment in the Contract Price, the adjustment shall be determined by PM/CM on the basis of any of the methods described in Section 6.5.5, paragraphs A-D.

- 6.5.9 Overhead and Profit for actual cost of work performed by the Design-Builder and/or his Subcontractor is given in the Cost Model.
- 6.5.10 If the net value of a change results in a credit from Design-Builder or Subcontractor, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit as indicated in the Final GMP. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.
- 6.5.11 Record Keeping: In the event that the pricing method selected is the “cost plus” method described in Section 6.5.5, Paragraphs C and D, Design-Builder shall keep and present daily, in such form as PM/CM may prescribe, an itemized accounting together with appropriate supporting data of the labor, materials, and equipment used during that Day. All labor shall be recorded on separate time sheets clearly identified with the Change Order number and scope of extra work involved. These time sheets shall be signed daily by PM/CM. No costs will be allowed for time not recorded and signed the same day the work takes place. Design-Builder and PM/CM shall discuss and attempt to resolve any disputed concerning Design-Builder’s daily records at the time the report is submitted.
- 6.5.12 Reconciliation: Design-Builder shall on a monthly basis accompanying the progress payment request submit a reconciliation for all Work performed under a cost plus Change Order during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the Work of the Change Order is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.
- 6.5.13 All changes authorized by the Contract Documents may be made without notice to or consent of the sureties on the Contract bonds, and shall not reduce the sureties’ liability on the bonds. GILBERT reserves the right to require additional payment or performance bonds to secure a Change Order.

7.0 INSURANCE AND BONDS; INDEMNIFICATION

7.1 INSURANCE TO BE PROVIDED BY THE DESIGN-BUILDER

The Design-Builder shall provide the insurance required of it by the provisions of Exhibit K hereto, the cost of which shall be paid as an Indirect Cost.

7.2 PAYMENT AND PERFORMANCE BONDS

- 7.2.1 The Contractor shall furnish and deliver to GILBERT the Payment and Performance Bonds (Exhibits L and M) prior to, and as a condition precedent to, commencement of the Construction Work on the Site in accordance with ARS Section 34-608.
- 7.2.2 A Performance Bond in an amount equal to the full Construction cost conditioned upon the faithful performance of the Contract in accordance with Plans, Specifications and Conditions thereof. Such bond shall be solely for the protection of GILBERT. The Performance Bond shall remain in force the greater of (a) two years after Final Completion of the Work, or (b)

until the expiration of all warranties and guarantees as required by the Contract.

- 7.2.3 A Payment BOND in an amount equal to the full Construction cost solely for the protection of the claimants supplying labor or Materials to Design-Builder or his Subcontractors in the prosecution of the Work provided for in such Contract. The Payment Bond shall remain in effect for at least one year after Final Completion of the Work.
- 7.2.4 Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.
- 7.2.5 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State, and the bonds shall have attached thereto a certified copy of the Power of Attorney of the signing official.

7.3 INDEMNIFICATION

To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Indemnified Parties from and against claims, damages, losses and expenses arising out of or resulting from performance of the Work by Design-Builder, its agents, officers, employees or subcontractors. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph. Such indemnification shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder or a Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

8.0 [RESERVED]

9.0 DISPUTES

- 9.1 Disputes between GILBERT and Design-Builder: In the event of any dispute arising between GILBERT and the Design-Builder regarding any part of the Contract or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.
- 9.2 Dispute Resolution Procedures: Initial Meeting to Resolve Disputes. Any Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at GILBERT's offices within three (3) Working Days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by GILBERT's Authorized Representative, the Design-Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized

Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

9.2.2 Mediation:

9.2.2.1 If the dispute has not been resolved within five (5) Working Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given any written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) Working Days after his/her appointment, which meeting shall be attended by GILBERT's Authorized Representative, the Design-Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.

9.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within twenty (20) Working Days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

10.0 EVENTS OF DEFAULT AND REMEDIES; TERMINATION

10.1 DESIGN-BUILDER EVENTS OF DEFAULT

The following shall be considered "Design-Builder Events of Default":

- 10.1.1 if the Design-Builder fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after seven (7) Days written notice from the PM/CM, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;
- 10.1.2 if the Design-Builder materially breaches this Contract and fails, after seven (7) Days written notice from the PM/CM, to commence a cure to correct such breach and thereafter diligently pursue such cure to completion (such breach to include, but not be limited to, failure to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Design-Builder and the Subcontractors or disregard of Applicable Laws)
- 10.1.3 if a custodian, trustee or receiver is appointed for the Design-Builder, or if the Design-Builder becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Design-Builder causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Design-Builder, or

bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design-Builder, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

10.2 REMEDIES OF GILBERT UPON A DESIGN-BUILDER EVENT OF DEFAULT

10.2.1 Termination of Contract: Upon the occurrence of a Design-Builder Event of Default, GILBERT shall have the right to terminate this Contract upon an additional seven (7) Days written notice to the Design-Builder, provided that the Design-Builder has not commenced a cure within such seven (7) Day period. Without prejudice to any other rights or remedies of GILBERT, GILBERT, subject to any prior rights of the Surety, may:

10.2.1.1 take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by the Design-Builder;

10.2.1.2 accept assignment of the Subcontracts; and

10.2.1.3 finish the Work by whatever reasonable method GILBERT may deem expedient. When GILBERT terminates the Contract as aforesaid, the Design-Builder shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the GMP exceeds costs incurred in finishing the Work, such excess shall be paid to the Design-Builder, up to the amount due the Design-Builder to date. If such costs exceed the unpaid balance of the GMP, the Design-Builder shall pay the difference to GILBERT.

10.2.2 Recourse to Payment and Performance Bonds: Upon the occurrence of a Design-Builder Event of Default and termination of this Contract by GILBERT, GILBERT may call upon the Surety to perform its/their obligations under the Payment and Performance Bonds, if applicable. GILBERT agrees that, so long as the Surety shall not be in default under the Payment and Performance Bonds, GILBERT shall not exercise its rights to correct deficiencies, take over the Work or complete the Work and deduct an amount equal to expenditures incurred by GILBERT in so doing.

10.3 GILBERT EVENTS OF DEFAULT

It shall be considered "GILBERT Events of Default" if the Work is stopped for a period of forty-five (45) Days through no act or fault of the Design-Builder for any of the following reasons:

10.3.1 issuance of an order of a court or other public authority having jurisdiction;

10.3.2 an act of government, such as a declaration of national emergency, making material unavailable;

10.3.3 GILBERT has not made payment on the certificate for payment within the time stated in the Contract Documents and/or has not notified the Design Builder in writing of the reason for withholding payment. GILBERT may withhold payment in part to the extent reasonably

necessary to protect GILBERT.

If a GILBERT Event of Default exists and is continuing, the Design-Builder may, upon seven (7) Days additional written notice to GILBERT, terminate the Contract and recover from GILBERT payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment and services rendered, including reasonable overhead and profit; provided, however, if GILBERT Event of Default is the condition described in Section 10.3.1, no overhead and profit shall be paid to the Design-Builder on account of uncompleted Work.

10.4 REMEDIES NOT EXCLUSIVE

Except as otherwise provided in this Contract, no remedy under the terms of this Contract is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

10.5 TERMINATION OR SUSPENSION FOR CONVENIENCE

- 10.5.1 Termination for Convenience: GILBERT may terminate this Contract, or any portion of Work to be performed hereunder at any time by a notice in writing from GILBERT to the Design-Builder for GILBERT's convenience. In such case, GILBERT shall pay to the Design-Builder all funds due the Design-Builder for work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid retainage, shall be released within thirty (30) Days of termination of the Contract for convenience.
- 10.5.2 Suspension for Convenience: GILBERT may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as GILBERT may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Contract. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible or (2) that an equitable adjustment to the GMP and/or Schedule is made or denied under another provision of this Contract. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee. Any claim for constructive suspension shall be made in accordance with the procedures set forth in Article 6.

11.0 MISCELLANEOUS PROVISIONS

11.1 GOVERNING LAW

This Contract shall be governed by the laws of Arizona.

11.2 IMMIGRATION LAW COMPLIANCE WARRANTY

- 11.2.1 As required by A.R.S. § 41-4401, Design-Builder hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Design-Builder further warrants that after hiring an employee, Design-Builder verifies the employment eligibility of the employee through the E-Verify program.
- 11.2.2 If Design-Builder uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.
- 11.2.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Design-Builder is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. GILBERT at its option may terminate the Contract after the third violation. Design-Builder shall not be deemed in material breach of this Contract if the Design-Builder and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).
- 11.2.4 GILBERT retains the legal right to inspect the papers of any Design-Builder or subcontractor employee who works on the Contract to ensure that the Design-Builder or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.
- 11.2.5 If state law is amended, the parties may modify this paragraph consistent with state law.

11.3 EQUAL TREATMENT OF WORKERS

CONTRACTOR shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the WORK. CONTRACTOR shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). CONTRACTOR shall protect and indemnify GILBERT and its representatives against any claim or liability arising from or based on the violation of such, whether by CONTRACTOR or its employees.

11.4 SUDAN AND IRAN

CONTRACTOR warrants that it does not have scrutinized business operations in Sudan or Iran, as prohibited by A.R.S. §§ 35-391.06 and 35-393.06, and further acknowledge that any subcontractor who is contracted by CONTRACTOR to perform work pursuant to this Contract

shall warrant that they do not have scrutinized business operations in Sudan or Iran.

11.5 SUCCESSORS AND ASSIGNS

GILBERT and the Design-Builder respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other Party hereto and to shareholders, successors, assigns and legal representatives of such other Party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither Party shall assign the Contract as a whole without the written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under the Contract and the Contract Documents.

11.6 WRITTEN NOTICE

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the day after deposit if delivery by overnight courier, or two (2) Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative as follows:

to Town of Gilbert:

Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, AZ 85296

to the Design-Builder:

Company Name
Company Address
Company Address

11.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD AND STATUTE OF REPOSE PERIOD

- 11.7.1 Before Substantial Completion: As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion.
- 11.7.2 Between Substantial Completion and Final Completion: As to acts or failures to act occurring between the relevant date of Substantial Completion and prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of Final Completion.
- 11.7.3 After Final Completion: As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design Builder pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or GILBERT, whichever occurs last.

11.7.4 Statute of Repose: The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

11.8 INTERPRETATION

Any and all headings of this Contract are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Contract. Where reference is made in this Contract to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

11.9 SEVERABILITY

If any provision of this Contract is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Contract shall not affect the remaining portions of this Contract or any part hereof, and they shall otherwise remain in full force and effect.

11.10 WHOLE CONTRACT

This Contract, the Exhibits hereto and the Contract Documents shall constitute the entire Contract between the Parties, and no inducements, considerations, promises or other references shall be implied in this Contract that are not expressly addressed herein.

11.11 ACCOUNTING RECORDS

The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be reasonably satisfactory to GILBERT. GILBERT and GILBERT's accountants shall be afforded access to the Design-Builder's records, books, correspondence, instructions, drawings, receipts, Subcontracts, vouchers, memoranda and other data relating to this Contract, and the Design-Builder shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date first above written.

TOWN OF GILBERT

By: _____
John Lewis, Mayor

ATTEST:

Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Town Attorneys
By: _____

DESIGN-BUILDER

By: _____

Its: _____

ATTEST:

Secretary

LIST OF EXHIBITS

Exhibit A	Scope of Work
Exhibit B	Pre-Construction Phase Services
Exhibit C	Schedule
Exhibit D	Guaranteed Maximum Price (GMP) Proposal
Exhibit E	List of Construction Allowance Items
Exhibit F	List of Contract Documents
Exhibit G	Site Description
Exhibit H	Design-Builder Team and Key Personnel
Exhibit I	Billing Rates
Exhibit J	Designation of GILBERT's Authorized Representative
Exhibit K	Insurance Requirements
Exhibit L	Performance Bond
Exhibit M	Labor and Materials Bond
Exhibit N	Affidavit Regarding Settlement of Claims
Exhibit O	Total Project Cost
Exhibit P	Hazardous Materials